

**REMARKS/ARGUMENTS**

Reconsideration and withdrawal of the outstanding grounds of rejection are respectfully requested in light of the above amendments and the remarks that follow.

The Examiner has rejected claims 1-4, 8-13 and 17 and 18 under 35 U.S.C. § 102(b) as anticipated by Lockwood (U.S. Patent No. 4,687,139).

Lockwood discloses a rotary pop up sprinkler adapted to extend from an in-ground container. A turret assembly 151 (which the Examiner refers to as a "misting head") incorporates upper and lower nozzle grooves 162, 164, 177 and 178. According to the reference, (see the paragraph bridging columns 8 and 9), water is emitted from the nozzle orifices in relatively continuously streams that are rotated smoothly to provide maximum beneficial irrigation. As such, the Lockwood reference is wholly relevant to the subject matter of independent claims 1, 8 and 17. In this regard, independent claim 1 has been amended to require that the radial flange at one end of the housing be adapted to secure the housing to a support structure. The flange 34 referred to by the Examiner is clearly not adapted to perform any such function. In addition, claim 1 has also been amended to require that the at least one misting nozzle have an orifice sized to deliver water droplets having maximum cross-sectional dimensions of between about 5 and 100 microns, thus clearly distinguishing the claimed misting apparatus from the continuous rotary stream sprinkler of Lockwood.

Dependent claim 3 has been amended to require that the misting head cover plate engage the radial flange and conceal the at least one nozzle when the misting head is received and the recess in a retracted position. To the extent arc shield 181 in Lockwood can be considered a cover plate, it does not engage radial flange 34 in the retracted position.

Dependent claims 2 and 4 is patentable by reason of their dependence upon claim 1.

Independent claim 8 has also been amended in a manner similar to claim 1 and thereby patentably distinguishes over Lockwood for the same reasons presented above.

The subject matter of dependent claim 9 is nowhere disclosed or suggested in Lockwood, and the subject matter of dependent claims 10-13 is patentable by reason of the dependence of those claims from claim 8.

Independent claim 17 has also been amended in a manner similar to claim 1 and is therefore patentable for the same reasons presented above.

Dependent claim 18 requires that the cover plate overlie at least a portion of the radial flange when the misting head is in the retracted position and as noted above, this is clearly not the case in Lockwood.

For the above reasons, it is respectfully submitted that the rejection under 35 U.S.C. § 102 as anticipated by Lockwood has been overcome.

The Examiner has rejected claims 1, 3, 4, 7-11, 13, 16-18 under 35 U.S.C. § 103 as unpatentable over Keely over Galvis.

Keely discloses a pop-up nozzle for an underground sprinkler system. The Examiner contends that it would have been obvious to modify Keely to incorporate a retraction spring as disclosed in Galvis thereby producing the claimed invention.

Neither Keely nor Galvis disclose or suggest misting apparatus of the type required by the claims required by the claims of this application. In fact, Keely and Galvis are related to in-ground, pop-up rotary sprinkler systems similar to Lockwood. Thus, the modifications to independent claims 1, 8 and 17 as discussed herein above, also serve to patentably distinguish the claims over any combination of Keely and Galvis.

The Examiner has rejected claims 2 and 12 under 35 U.S.C. § 103 as unpatentable over Keely in view of Galvis and further in view of Ash. Ash is relied upon for disclosing an extendable misting apparatus incorporating a housing and a bearing block with an O-ring 16. The Examiner contends that it would have been obvious to modify Keely to incorporate the teaching of Ash.

Ash discloses a snow-making apparatus wherein a stream of pressurized water is mixed with air to create snow.

Since Ash in no way remedies the deficiency of the base combination of Keely and Galvis for the reasons presented above, it is respectfully submitted that the addition of Ash is insufficient to render obvious the subject matter of claims 1 and 8 from which claims 2 and 12 depend.


In sum, the prior art as cited and applied by the Examiner relates to irrigation apparatus that are intended to uniformly irrigate a designated area. This is in stark contrast to the subject matter of this invention where misting heads with orifices sized to deliver water droplets having a maximum cross-sectional dimension of between about 5 and 100 microns are designed to provide evaporative cooling. In this sense, the prior art relied upon by the Examiner is wholly irrelevant.

It is respectfully submitted that all of the elected claims 1-4, 7-13 and 16-18 are now in condition for immediate allowance and early passage to issue is requested. In the event, however, any small matters remain outstanding, the Examiner is encourage to telephone the undersigned so that the prosecution of this application can be expeditiously concluded.

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Respectfully submitted,

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